In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1665

CARIBTOW CORPORATION, PETITIONER

v.

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION[1]

Petitioner contends that the Occupational Safety and Health Act cannot constitutionally apply to Puerto Rico.

1. On March 15, 1973, the Secretary of Labor cited petitioner, a Puerto Rican corporation, for a serious violation of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*, for moving a crawler crane from the deck of a barge onto a dock in an unsafe manner. During the transfer, the crane fell into the water, killing the crane operator. Following an investigation, the Secretary of Labor issued petitioner a notification of a proposed penalty of $700 for a serious violation of its duty

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[1]The Secretary of Labor is the real adverse party in interest in this case.

to provide its employees with a safe place to work. 29 U.S.C. 654(a)(1).

On March 26, 1973, petitioner filed a notice of intent to contest both the citation and the proposed penalty; and the Secretary's complaint before the Commission issued April 6, 1973. 29 U.S.C. 659(a); 29 C.F.R. 2200.33(a). On April 17, 1973, petitioner moved to dismiss the Secretary's complaint on the ground that Congress lacks the power to legislate over Puerto Rico. In a supplemental motion to dismiss, filed April 26, 1973, petitioner stated it refused to post a statutory notice informing its employees of the citation and of their right to participate in the litigation as parties. 29 U.S.C. 658(b); 29 C.F.R. 2200.7(g).

On August 16, 1973, the administrative law judge granted a motion to dismiss filed by the Secretary, holding that petitioner's continued refusal to post the required notice to employees constituted a breach of a condition precedent to its status as a party. The citation and proposed penalty were affirmed. The action of the administrative law judge was affirmed by the Occupational Safety and Health Review Commission.

Petitioner sought review in the United States Court of Appeals for the First Circuit, asserting that the Occupational Safety and Health Act of 1970 cannot apply to Puerto Rico. In a thorough and well reasoned opinion by Chief Judge Coffin, the court of appeals held that the Act applies to Puerto Rico, and, accordingly, affirmed the order of the Commission.

2. Petitioner's sole contention is that Congress lacks power to enact legislation applicable to Puerto Rico.

In 1950, Congress enacted Public Law 600[2] "in the nature of a compact," and this "compact" was approved

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[2]64 Stat. 319, 48 U.S.C. 731(b-e).

by the people of Puerto Rico in a referendum in 1951. Pursuant to this law, Puerto Rico adopted a constitution in 1952, which was approved by Congress. Congress also repealed part of the old Organic Act (the Jones Act of 1917).[3] The remainder of the Organic Act was renamed the Puerto Rican Federal Relations Act, 48 U.S.C. 731 *et seq.* Section 9 of this Act, 48 U.S.C. 734, provides:

> The statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Puerto Rico as in the United States * * *.

Petitioner does not contend that the Occupational Safety and Health Act of 1970 is "locally inapplicable," nor does petitioner assert that the Act is inapplicable to Puerto Rico by its terms.[4] Petitioner simply asserts that the Puerto Rican Federal Relations Act prohibited Congress from enacting any legislation, after the effective date of the Act, affecting Puerto Rico without Puerto Rican consent.

It is beyond dispute that Congress has the power to enact legislation affecting Puerto Rico.[5] Petitioner contends, however, that all of the cases supporting this proposition involved statutes enacted prior to 1952, and thus, only established that laws in effect in Puerto Rico before

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[3]39 Stat. 951, 48 U.S.C. 731 *et seq.*

[4]The Occupational Safety and Health Act of 1970 was expressly made applicable to Puerto Rico. See 29 U.S.C. 653(a).

[5]See *United States* v. *DeJesus*, 289 F. 2d 37 (C.A. 2); *Rodriguez Salgado* v. *United States*, 277 F. 2d 653 (C.A. 1); *Dario Sanchez* v. *United States*, 256 F. 2d 73 (C.A. 1); *Moreno Rios* v. *United States*, 256 F. 2d 68 (C.A. 1); *United States* v. *Mirabal Carrion*, 140 F. Supp. 226 (D.P.R.); *Mitchell* v. *Rubio*, 139 F. Supp. 379 (D.P.R.); *United States* v. *Mejias*, 131 F. Supp. 957 (D.P.R.); *Cosentino* v. *International Longshoremen's Association*, 126 F. Supp. 420 (D.P.R.); *Arbona* v. *Kenton*, 126 F. Supp. 366 (S.D.N.Y.); *Carrion* v. *Gonzalez*, 125 F. Supp. 819 (D.P.R.).

the compact remained so afterward.[6] Petitioner concludes that any subsequent legislation is invalid without Puerto Rican consent. There is no merit to this contention. Not only did Congress not include a requirement for such ratification by Puerto Rico in the Federal Relations Act, but it deliberately used the same language as that of the Organic Acts of 1900[7] and 1917,[8] neither of which had required Puerto Rico's consent to Congressional enactments. Moreover, the language of the exceptions clause to Section 9 of the Federal Relations Act—"except as hereinbefore or hereinafter otherwise provided"— indicates that Section 9 is fully prospective. This interpretation of Section 9 is also supported by the legislative history of the Federal Relations Act[9] and by subsequent federal legislation.[10]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JUNE 1974.

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[6]But see *Hodgson* v. *Union de Empleados de los Supermercados Pueblos*, 371 F. Supp. 56 (D.P.R.).

[7]31 Stat. 77.

[8]39 Stat. 951, 48 U.S.C. 731 *et seq.*

[9]*See* H. Rept. No. 2275, 81st Cong., 2d Sess., U.S. Code Cong. and Adm. News 2688 (1950). *See also* Magruder, *The Commonwealth Status of Puerto Rico*, 15 U. Pitt. L. Rev. 1, 17 (1953).

[10]For example, the following post-1952 federal statutes were expressly made applicable to Puerto Rico: Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 802(24); Rehabilitation Act of 1973, 87 Stat. 362; Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. 402(b); Public Works and Economic Development Act of 1965, 42 U.S.C. 3216; Public Broadcasting Act of 1967, 47 U.S.C. 397(1); Consumer Product Safety Act, 15 U.S.C. (Supp. II) 2052(a)(10); Federal Metal and Nonmetallic Mine Safety Act, 30 U.S.C. 721(a); Federal Insecticide, Fungicide, and Rodenticide Act of 1972, 7 U.S.C. (Supp. II) 136(aa); Economic Opportunity Act of 1964, 42 U.S.C. 2949(1).